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# Michigan Small Farm Council

Statement by Jamie Clover Adams *in white*  
**Rebuttal by Michigan Small Farm Council** *in blue*

**May 13, 2014**

**Jamie Clover Adams, Director of MDARD, today released a statement on the 2014 Site Selection GAAMPs. Her statement is provided below, in white, interrupted occasionally by our comments in blue.**

**Agriculturally speaking... Fact v. Fiction and what really changed with the GAAMPs?**

*by Jamie Clover Adams, Director, MI Department of Agriculture & Rural Development*

Recent changes to the voluntary set of guidelines used to support the state's Right to Farm Act have created a maelstrom of misunderstanding and misinformation about what the law does and does not do, including what protections it may or may not afford Michigan's farming community. That misunderstanding continues to be amplified by social media reports which vastly misrepresent the facts and the potential impacts, especially as it relates to small and urban farmers.

**Efforts to inform Michigan citizens about the GAAMPs and Right to Farm have indeed led to a maelstrom, but the reason is not because Michigan citizens are confused. Instead, as people begin to understand exactly what our state agricultural agency is aiming to accomplish with the changes to the 2014 Site Selection GAAMPs they are rising to object, strenuously, because they don't**

**agree with the direction of this change in state agricultural policy.**

Since the beginning, the Right to Farm Act has been specific to commercial agriculture, both small and large. Raising chickens or other food for your own family's consumption has never been within the scope of the Right to Farm Act and that has not changed.

**There has never been any confusion about the commercial requirement for Right to Farm protection. Everyone knowledgeable about these issues understands that only commercial operations are protected by Right to Farm. However, we also know that the courts have ruled that since the law does not specify a minimum amount required to meet the definition of 'commercial', that there is in fact no minimum. As a result even very small farms that raise chickens or other food for family consumption can also meet the commercial requirement of Right to Farm, by selling their excess farm products to friends and neighbors. In our view this is a legal and legitimate use of Right to Farm protection.**

The Right to Farm Act is still in place and remains unchanged – it was not repealed as some have alleged in their reporting. So, what has changed?

**We agree that the law has not changed, and we have not alleged that the law itself has changed. But it is important to note that because RTF protection *requires* compliance with applicable GAAMPs, any changes to the GAAMPs that are impossible to meet are equivalent to revoking Right to Farm protection.**

**We also agree that when changes to the GAAMPs are made for the purpose of defining generally accepted agricultural management practices, they fall within the scope of the authority of MDARD and the Agriculture Commission. In contrast, the changes recently approved have nothing to do with accepted agricultural management practices, and instead are a clear attempt to use the GAAMPs as a vehicle to deny Right to Farm protection to citizens who live in certain places. But all Michigan citizens are afforded Right to Farm protection by the language of the law itself, and making changes to the GAAMPs that eliminate those legal protections - for reasons other than acceptable agricultural management practices - do *not* in our view fall within the scope of authority of MDARD and the Agriculture Commission.**

**This is the legal argument that many have been making, that neither MDARD nor the Agriculture Commission have the authority to change the GAAMPs in a**

**way that essentially revokes the legal Right to Farm protections afforded to all Michigan citizens in the Right to Farm Act. In this view the attempt by MDARD to use the GAAMPs to deny Right to Farm protection to the majority of Michigan citizens is a serious separation of powers issue, since it is the job of the legislature to enact the laws, and the job of state agencies to implement them.**

The Right to Farm Act is a state law created in 1981 to address urban encroachment into rural areas because the folks moving into the country didn't like the smells, sounds, dirt, etc. that come with agriculture and farming practices.

**The Right to Farm Act has been amended 3 times since 1981, and has not really been about protecting traditional rural farmers from suburban encroachment for a very long time. Instead, our Right to Farm law is now much more about protecting corporate farms from nuisance lawsuits from their rural farm neighbors and from regulation by local governments, who would like to limit their offenses but can't because Right to Farm protects those farm operations. If there is any type of farming in Michigan that should be examined for unwarranted Right to Farm protection, it is industrialized agriculture.**

**But MDARD appears to believe instead that small farms should be weakened and large industrial farms strengthened, as evidenced by the two kinds of changes that were approved on April 28th: MDARD not only made changes to the Site Selection GAAMPs aimed at revoking Right to Farm protection for small farms, they also made changes that allow very large farms to "self-assess" to meet the requirements of the Site Selection GAAMPs. If large farms with as many as 500 animal units (the equivalent of 50,000 chickens) in rural areas can self-assess, one wonders why small farms with as few as a single chicken in urban areas cannot also self-assess, since surely the potential for nuisance and harm is far greater in the former than the latter. And yet in a single document on a single day, 4 appointed members of the Michigan Commission of Agriculture and Rural Development did just that, with a single dissenting vote cast by Commissioner Dru Montri.**

The Act provides an affirmative defense to nuisance lawsuits if farmers are in conformance with the relevant Generally Accepted Agricultural Management Practice (GAAMP) standards. It's important to remember that the Right to Farm Act has never provided blanket permission to locate farm animals in every corner of Michigan.

**Michigan's Right to Farm law contains no language that limits Right to Farm protection based on which 'corner' of Michigan the farm operation resides in, and never has. If it ever becomes important to restrict legal agricultural rights to certain corners of the state and not others, the state legislature has the authority to do so - but the state agricultural agency does not.**

The Livestock Site Selection GAAMP places conditions on the location of farm animals to reduce the risk of nuisance complaints. The difference over the past few years is that individuals are bringing farm animals into existing, primarily residential areas increasing the potential for conflict and nuisance complaints.

**Very few nuisance complaints are actually lodged against small farms in residential areas, and few or no such complaints have recently been brought before the Agriculture Commission. If such complaints do become a problem, then an appropriate solution would be to create language in the GAAMPs to specify how operations should be managed to mitigate those nuisances, rather than to create language to globally revoke Right to Farm protection to all such operations, as has recently been accomplished with the changes to the 2014 Site Selection GAAMPs.**

The Michigan Commission of Agriculture and Rural Development made revisions to the Livestock Site Selection GAAMP adding Category 4 sites, which are locations that are primarily residential, don't allow agricultural uses by right and are, therefore, not suitable for farm animals for purposes of the Right to Farm Act.

**In 1999 the Right to Farm Act was amended to specifically preclude the rights of local governments to infringe on Right to Farm protections. Since both 'primarily residential' and 'agricultural uses by right' imply rights that are provided by local governments, they are not permitted by law to be used to determine Right to Farm protection.**

Under the Livestock Site Selection GAAMP, primarily residential areas are sites with more than 13 non-farm homes within an eighth of a mile of the livestock facility or one non-farm home within 250 feet of the livestock facility. However, local communities can decide to allow farm animals under these circumstances.

**Again, MDARD does not have the authority to deny Right to Farm protection based on zoning. On the other hand, If this definition of 'primarily residential' is intended to be used regardless of zoning designation, then a great many farmers will meet this definition not only in urban areas, but also in rural areas, because many operations have a barn or spread manure within 250 feet of a**

**neighboring residence. This is a very harmful policy that is the result of hasty changes to the GAAMPs that were introduced and voted on during the same meeting, without allowing the public to comment on this particular language before it was voted on.**

This decision was not made in haste. The Commission took hours of public testimony, held a number of meetings and has been looking into this issue for several years.

**The 2014 Site Selection GAAMPs language that was approved on April 28, 2014, bears little resemblance to the version proposed in January 2014, and which generated hours of public testimony and nearly 700 letters in opposition. The April 2014 version is also significantly different from the March 2014 version, which also generated widespread public opposition in both public comments and written letters. The final change to the proposed language occurred during the April 2014 meeting in which it was voted on, and includes the controversial definition of "primarily residential". This new definition received no public comment because it was not introduced until after the opportunity for public comment was over. This is a matter of public record, and will be recorded in the Minutes of the April 28, 2014 meeting of the Agriculture Commission.**

In recent years, there has been increased interest in having a small number of livestock in non-rural areas. While more than 40 communities in Michigan have ordinances allowing for the keeping of livestock in non-rural residential areas, many do not, resulting in increased conflict between municipalities and livestock owners in these areas.

**The problem of livestock in non-rural areas is small, but could certainly be addressed by providing guidance to small farmers in residential areas by creating appropriate guidelines in the GAAMPs. This is the intended use of the GAAMPs. Instead, in this instance MDARD is using the GAAMPs for a purpose for which they were clearly not intended, and that is to define requirements that cannot be met, in an overall effort to deny Right to Farm protection.**

MDARD continues to support the expansion of urban agriculture and livestock production across the state, but has consistently said the expansion of agriculture into urban and suburban settings must be done in a way that makes sense for community residents, as well as the overall care of farm animals and livestock.

**MDARD does not have the authority to determine which farmers will be subject to local government regulations and which will not. The Right to Farm law specifically prohibits local governments from infringing on Right to Farm protections, and the courts have interpreted this right as extending to those who live in residential areas. The legislature has the right to change the law to add restrictions if needed or desired, but MDARD does not. Furthermore, the overall care of farm animals and livestock on small farms, even in urban areas, far exceeds the care that they receive in intensive farm operations in rural areas.**

I encourage folks to contact their municipalities to encourage agriculture in their communities. MDARD is currently working with the City of Detroit as they draft a livestock ordinance that could be used as a model for other municipalities.

**In late 2011 MDARD worked with Detroit on a different change to the 2012 GAAMPs Preface, to specifically deny Right to Farm protection to all citizens who live in cities of over 100,000 residents. This effort is another attempt by MDARD to use its authority to deny state-level Right to Farm protection to residents of a city that is famous for its lack of fresh food, despite the fact that MDARD does not have the authority to deny any Michigan citizen their legal rights. Public documents show that Detroit has expressed concern on numerous occasions that the change to the GAAMPs that MDARD made for them in 2012 will not withstand a court challenge, because of the clear and unambiguous language in the law that specifically prohibits local units of government from infringing on the Right to Farm protections of every citizen, including those citizens who happen to reside in Detroit.**

Our staff are out every day helping livestock producers site their facilities in conformance to GAAMPs to reduce nuisance risks. Staff work hard to help resolve conflicts between neighbors over nuisance issues to help them avoid going to court.

**Very few nuisance conflicts exist with small farmers and their neighbors, and all are solvable with the creation of appropriate GAAMPs language to mitigate them. MDARD not only lacks the authority to deny legal Right to Farm protection, it lacks good policy reasons for doing so.**

Again, the GAAMPs are voluntary – not regulatory. MDARD has no enforcement authority. Nuisance protection under the Right to Farm Act is, continues to be, and always has been something that's determined by a judge – not the Commission of Agriculture and Rural Development or MDARD.

For more information on this topic, visit [www.michigan.gov/righttofarm](http://www.michigan.gov/righttofarm)

MDARD routinely informs individuals and townships that small farmers in residential areas are not protected by Right to Farm, which sometimes has the effect of inviting local governments to bring lawsuits against small farmers. A recent example is documented by Judge Solka in the 2012 Forsyth Township v Buchler case, in which MDARD advised Forsyth Township that the Buchlers were not protected by Right to Farm. Judge Solka, however, evaluated the law and the facts and concluded that small farmers in residential areas are protected by Right to Farm, even when local ordinances are in place that prohibit farming. As a result of this ruling, Randy and Libby Buchler continue to produce farm products that they sell locally to benefit both their family and their community.

This is the kind of small agricultural operation that our state agricultural agency is fighting against, and the kind of agriculture that will be lost if the changes to the 2014 Site Selection GAAMPs that were approved on April 28, 2014, are allowed to stand.

A link to the original Clover Adams statement is [here](#).

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**NOTE VENUE CHANGE  
FOR SENATE AGRICULTURE  
COMMITTEE MEETING ON  
THURSDAY, MAY 15  
8:30 AM**

**Senate Hearing Room  
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Boji Tower  
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